

IN THE UNITED STATES DISTRICT COURT

FILED
BILLINGS DIV.

FOR THE DISTRICT OF MONTANA

2008 JUL 2 PM 1 50

BILLINGS DIVISION

PATRICK E. DUFFY, CLERK

NADINE ROBINSON,

) CV-06-99-BLG-RFC

BY DEPUTY CLERK

Plaintiff,

)
SECOND ORDER ADOPTING
FINDINGS AND RECOMMENDATIONS
OF U.S. MAGISTRATE JUDGE

vs.

)
MARK MORSE, et al.,
)
Defendants.

)

On May 22, 2008, United States Magistrate Judge Carolyn S. Ostby entered her Findings and Recommendation with regard to Defendants' Motion for Summary Judgment. *Doc. 25*. Magistrate Judge Ostby recommends Morse's motion be granted because Robinson cannot prove several of the elements of a malicious prosecution claim required by Montana law.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the May 22, 2008 Findings and Recommendation. Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

Here, Magistrate Judge Ostby made the factual finding that even considering Morse's deposition testimony, Robinson failed to raise an issue of fact with regard to whether Morse

lacked probable cause for his actions and whether he acted with malice. *Doc. 28, pp. 5-8.* As noted, failure to object to the magistrate's factual findings waives objection to that finding. *Turner, supra.* Further, Magistrate Judge Ostby correctly ruled that failure to offer proof of any one of the elements of malicious prosecution dooms the cause of action and summary judgment in favor of the defendant is proper. *Sherner v. National Loss Control Services Corp.*, 124 P.3d 150, 157 (Mont. 2005).

For that reason, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

IT IS HEREBY ORDERED Morse's Motion to for Summary Judgment (*Doc. 25*) is **GRANTED**.

The Clerk of Court is advised to enter judgment and close this case accordingly.

Dated this 2nd day of July, 2008.



RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE